SUPREME COURT, U.S.

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No. 486

In the Supreme Court of the United States

OCTOBER TERM, 1957

YOKNAPATAWPHA DRAINAGE DISTRICT NO. 2, LAFAYETTE COUNTY, MISSISSIPPI, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The district court did not write an opinion. The opinion of the Court of Appeals (R. 83-91; Pet. App. 21-28) is reported in 242 F.2d 925.

JURISDICTION

The judgment of the Court of Appeals was entered April 2, 1957, and appears at page 92 of the record.[1] A timely petition for rehearing was denied on May 23, 1957 (Pet. App. 33). The time for filing a peti-

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[1] The petition erroneously states that the order overruling the petition for rehearing is sought to be reviewed (Pet. 2).

tion for certiorari was extended to September 20, 1957, by order of Mr. Justice Black entered August 29, 1957. The petition for a writ of certiorari was filed September 20, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

QUESTION PRESENTED

Whether, where the United States condemns private lands located within a drainage district and pays to the owners the full market value of such lands, the United States must also compensate the drainage district for its claim to future assessments against the property.

STATUTES INVOLVED

The relevant portions of the Laws of Mississippi, 1912, Ch. 197, are set out in the Appendix, *infra*, pp. 7-9.

STATEMENT

In January 1952, the United States instituted proceedings to condemn the fee simple title to certain lands in Mississippi for use in connection with the construction, operation and maintenance of the Enid Dam and Reservoir Project (R. 7-13). The tract here involved consisted of 126.5 acres and comprised a drainage ditch owned by petitioner. About two-thirds of the land in the district previously had been taken by the United States. Petitioner contended by answer (R. 16-25) that it was created under the provisions of Chapter 197 of the Mississippi Laws of 1912; that pursuant to that law the lands in the

district were assessed with the benefits to accrue thereto by reason of the improvements to be made in the district in the total sum of $147,151, and that the assessed benefits then became a lien upon all of the land in the district. It further contended that after paying the bonds which were issued to cover the cost of construction of the drainage system, and cost of maintenance and operation, there remained an amount of unused assessed benefits on all the lands of $33,109.05, and to defray the expense of protection to the remaining land in the district, it would be necessary for the district to levy additional taxes to the full amount of the assessed benefits of all the lands in the district, including the lands previously taken by the United States.

Petitioner contended that by virtue of the alleged lien it had an indefeasible property right in the lands for which the United States should pay the amount of the unused assessed benefits, or, in the alternative, it should have the right to make future assessments on the land taken by the Government for maintenance of the remaining portion of the drainage system.

The district court held that there is no specific lien on any of the land in the drainage district because of any unused assessed benefits (R. 53-54). Just compensation for the land taken in the amount of $1400 was determined by a jury, the only evidence of value being presented by the Government, and final judgment was entered (R. 74-76; Pet. App. 18-20).

The court of appeals affirmed the judgment (R. 83-91). It held that the trial court was correct in determining that the unused assessed benefits in the sum of

$33,109.05 did not constitute a lien upon the lands condemned by the United States, and in view of this conclusion no indefeasible interest or estate was taken from the district in this proceeding, hence no future assessments can be levied on the lands now owned by the United States. Petition for rehearing was denied (R. 103; Pet. App. 33).

ARGUMENT

The decision of the court of appeals is correct and does not present any conflict justifying review by this Court.[2] Petitioner's contention simply is that when it was established and benefits of $147,151 were estimated on approximately six thousand acres of land in the district, a lien was imposed against all of this land in that amount, and that the Government must pay as just compensation a portion of the balance of $33,109.05, which it terms "unused assessed benefits." As pointed out by the court of appeals, it is clear from Section 20 (App. *infra*, pp. 7-8) of the Act "that the assessment of benefits and assessments for the cost of the proposed work are not one and the same, but the assessment of benefits accruing to each tract in the district from the construction of the drainage canals is used as a basis for apportioning to the various tracts within the district their proportionate share of the cost of the proposed work." (Pet. App. 24-25).

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[2] *United States* v. *Aho*, 68 F. Supp. 358 (D. Ore.), and *United States* v. *Florea*, 68 F. Supp. 367 (D. Ore.), rest on Oregon law and have little applicability to the question here.

The "assessment" for the cost of construction in this case was $58,860.40. Bonds were issued for this amount and the assessment became a lien upon the land and remained a lien until it was paid in full, pursuant to the provisions of Sections 25 (App. *infra*, pp. 8-9) and 34 of the Act of 1912 (Pet. App. pp. 34-35). When this proceeding was instituted all of the bonds had been paid except two, for which funds were available. Section 34 of the Act (Pet. App. 35) provides that the cost of repairing, altering, enlarging, cleaning, protecting, leveeing, and maintaining the ditch may be collected by levying an additional tax on the lands in the district, at the time of levying and collecting other taxes. Thus, both courts below were plainly correct in holding that under the Mississippi law the amount, which might have been collected from the landowners by levies to cover other repairs and maintenance, had not become a lien at the date of taking. And this conclusion on local law, we submit, presents nothing for this Court to review. *General Box Co.* v. *United States*, 351 U.S. 159, 165; *Huddleston* v. *Dwyer*, 322 U.S. 232, 237.

The holding of the court of appeals that no future assessment can be levied on these lands now owned by the United States whether the levy be termed a local assessment or a tax is sustained by decisions of this Court. *Mullen Benevolent Corp.* v. *United States*, 290 U.S. 89; *United States* v. *Allegheny County*, 322 U.S. 174; *Mayo* v. *United States*, 319 U.S. 441.

Petitioner's contention (Pet. 16) that the district court did not use the correct measure of damages

in awarding compensation for the taking of part of its drainage canal and right-of-way is without merit. At the trial of the case for the determination of just compensation, the only evidence was by a witness of the Government who gave a value of $1,265.00 (R. 60). The jury verdict was $1,400.00 (Pet. App. 18). The Court of Appeals held that this verdict was supported by the testimony of the only witness as to value (Pet. App. 27).

CONCLUSION

There is no conflict, and no issue warranting review by this Court. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

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APPENDIX

Pertinent portions of the Laws of Mississippi, 1912, Ch. 197, are as follows:

SEC. 12. *How commissioners to examine lands—damages and benefits determined.* As soon as may be after such petition shall be referred to said commissioners, or within such time as said county board of drainage commissioners may direct, the district drainage commissioner shall meet and go upon said lands and examine the same, and the lands over which the work is proposed to be constructed and determined, first: The starting point, route, and termini of the proposed work, and the location and size of the main ditch and laterals to be constructed in said drainage district which, in their opinion, will successfully drain the said lands, and whether drainage of the lands in such proposed drainage district is possible or not and what natural water courses are to be dredged, improved or used as a part of said system; second: Probable cost of the same, including expenses and court costs; third: What land will be injured or damaged by the proposed work and the probable aggregate amount of damage such lands will sustain by reason of the laying out and construction of such ditch or ditches; fourth: What lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of the construction of such work. * * *

SEC. 20. *Commission to examine lands and apportion cost of construction—benefits and damages.* As soon as practicable after the entry of such order organizing such drainage district, the said district drainage commissioners shall go upon said lands and examine the same and apportion the cost of said proposed work upon the several tracts of land according to the bene-

fits received by each from the said proposed work, putting down the same in dollars and cents, and shall also estimate and set down in another column the amount of damages, if any, that any of the owners of said lands may sustain in their opinion, by reason of the construction of said work over their said lands and the amount of the assessment against each tract of land and shall make and file a schedule or assessment roll of the same, substantially in the following form:

Name of Owner	Description of Land	Benefit	Damages	Assessment
	Sub. Div. S. T. R. Acres.	$	$	$

SEC. 25. *Payment of assessments—bonds may be issued.* At the time of confirming such assessment, the county board of drainage commissioners may order the assessments to be paid in installments, in such amount and at such times as will be convenient for the accomplishment of the proposed work; or may order the issuance of bonds for the total amount of said assessment; or may make the total amount of said assessment or any part thereof payable at a given date, and may issue the bonds for any balance. The assessment or any bonds ordered issued by the said county board of drainage commissioners, shall bear interest at a rate not exceeding six per cent per annum, and shall be nontaxable. But any owner of land in the district may pay the whole amount of the assessment and interest accrued, if any, against his land before it becomes due, or at any time thereafter, or any part of said assessment: *Provided*, such payment is made before any bonds are issued by the district. Said assessment or any bonds issued as herein provided shall be a lien upon the lands assessed, as other taxes, and such liens shall continue until such assessment is paid; and, in case any assessment or inter-

est assessment on any bonds issued, is not paid at the time required for the payment of taxes as hereinafter provided, the land shall be sold the same as lands required by law to be sold to enforce the payment of State and county taxes.

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